public administration

doi: 10.1111/j.1467-9299.2011.01918.x

# FOR LACK OF ANYTHING BETTER? INTERNATIONAL ORGANIZATIONS AND GLOBAL CORPORATE CODES

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This paper analyses the two most important international programmes for the voluntary regulation of corporate behaviour: the OECD Guidelines for Multinational Corporations and the UN Global Compact. It argues that international organizations adopted them mostly for reasons of political feasibility: by imposing minimal constraints on constituents the codes circumvented the most pressing problems of political acceptability associated with standard setting. It finds no clear evidence, however, that the network solutions adopted are technically more effective than traditional forms of regulation. The paper concludes that while it is unlikely that corporate behaviour will change simply as a result of participation in these programmes, if the programmes increase their ability to consistently discriminate between good and bad performers, the resulting 'soft' sanctioning power has the potential to alter corporate behaviour in the long run.

## INTRODUCTION

The worldwide shift from government to governance (Rhodes 1996, 1997; Peters and Pierre 1998, 2000) has changed the way in which state authorities exert sovereign control. The shift to governance refers to the decline of the classic command-and-control mode of regulation (in which public actors democratically selected by their national constituencies take decisions that are binding for everybody and then implement them through governmental agencies), and the ascendancy of a new system in which regulation is produced in a participatory fashion by public and private actors collaborating with each other.

The governance mode of regulation sees the involvement of non-state actors not only in the implementation of public policy, but often also in their formulation. One consequence is that regulatory functions, ultimately in the public interest (Mayntz 2006), are devolved to the self-regulation of private organizations (Haufler 2001, 2003; Pattberg 2005). Classic examples can be found in the fields of environmental and labour standards (Bartley 2005, 2007; Cashore *et al*. 2007; Prakash and Potoski 2007; Stafford 2007; Terlaak 2007), where matters that used to be, and still largely are, under the regulatory compass of the national state have become subject to complex private-public partnerships (Radaelli 2003; Porter and Ronit 2006) involving international organizations, administrative branches of the national state, various civil society organizations, and NGOs.

In this paper we do not discuss whether or not global codes of conduct and the associated private monitoring infrastructure weaken the national state (Rosenau and Czempiel 1992; Young 1994; Reinicke 1998; Zürn 2000). Rather, we investigate how they may be fundamentally changing the nature and function of international organizations, and the role that the latter exert in regulating the business environment. In order to do so, we examine the two most important international programmes for the regulation of corporate behaviour, the OECD Guidelines for Multinational Corporations and the UN Global Compact, and make two related arguments: first, that the reason why international organizations shift to network-governance modes of regulation seems to have less to do

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with technical effectiveness than with domain appropriation. In other words, network governance gives international organizations an opportunity to gain a presence in policy fields in which more traditional types of regulatory intervention, for example, standard-setting, are unlikely to be accepted by international constituents due to the controversial nature of the issues at hand (Ruggie 2001; Kell and Levin 2002). Second, that while there is no evidence that sheer participation in these voluntary programmes improves corporate behaviour, the programmes' increasing ability to issue fine-grained signals that discriminate between good and bad performers does have the potential to durably alter corporate behaviour, because socially-conscious market institutions increasingly heed these signals when making their decisions.

The following questions, broadly inspired by Agranoff and McGuire (2001), guide the empirical analysis of the two programmes:

1. what is their origin and significance?;
2. how do they function internally?;
3. what is the role of the local structures?;
4. what is their perceived impact?

In what follows we first examine the emergence of global corporate codes in international organizations in general terms. We then present our reconstruction and analysis of the two cases. We conclude with an assessment of their significance for corporate regulation.

## INTERNATIONAL ORGANIZATIONS AND GLOBAL CORPORATE CODES OF CONDUCT

International organizations emerge from agreement among nation-states and rely on nation-states for application of the international instruments they promulgate. Traditionally, an intergovernmental agreement introduces regulatory provisions in a particular policy domain, while implementation, prevention and sanctioning of non-compliance are left to the regulatory apparatuses of ratifying member states. The role of international organizations in what we call the 'traditional model' is typically to facilitate the process of intergovernmental negotiation and assist in the implementation process through capacity building at the national level.

In several policy domains this traditional regulatory model has given way to a new model, which in highly stylized terms operates as follows: 'in lieu' of detailed regulatory norms there is a global corporate code of conduct, that is a declaration of general principles which takes the form of 'soft law' (Abbott and Snidal 2003; Trubeck and Trubeck 2005; Abbott and Snidal 2009). This is issued and actively promoted by an international organization operating in the policy area in question. Responsibility for the more precise definition of the principles, as well as of the means to achieve them, is devolved to thematic sub-networks or to local actors (private and public), which are involved based on their interest in or familiarity with specific regulatory problems (Sabel *et al*. 2000; Fung *et al*. 2001). International organizations further contribute to achieving regulatory goals by systematically collecting data on the performance of local actors, often through the creation and publication of indicators that track the actors' progress (Ruggie 2001; Kell and Levin 2002; Ruggie 2002), as well as by promoting the circulation of information about best practices which emerge at the local level.

This regulatory system has two hypothesized beneficial effects: first, it places corporate behaviour under the scrutiny of NGOs, unions, and other actors, and in so doing


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induces corporate actors to pay attention to the social and environmental impact of their businesses (O'Rourke 2003, 2005); and, second, it encourages companies to compare their performance against their historical record and against that of their competitors, thus favouring organizational learning (Fung *et al*. 2001; Cetindamar 2007).

The shift to governance through voluntary initiatives is not an entirely new phenomenon for international organizations. For example in the field of corporate self-regulation, the first initiatives, the Organization for Economic Cooperation and Development (OECD)'s Guidelines for Multinational Enterprises and the International Labour Organizations (ILO)'s Tripartite Declaration of Principles Concerning Multinational Enterprises, date back to 1976 and 1977, respectively. Recently, however, global corporate codes have spread more widely and increased their significance. Companies often welcome the more direct involvement of international organizations in private monitoring activities (Béthoux *et al*. 2007). Under pressure from NGOs, unions, and consumers (O'Rourke 2003, 2005), multinational companies increasingly regard these voluntary codes and the associated monitoring infrastructure as a way to insure themselves against social risks (King and Lenox 2000) as well as a tool to preserve, improve, or rebuild their corporate image. From the point of view of firms, network-based monitoring systems are more flexible and less intrusive than traditional government regulation (Cashore 2002). They can be relatively easily integrated within existing corporate procedures for the governance of global supply chains (Sobczak 2006), for example, for quality control. Specifically, internationally sanctioned corporate codes contribute to bring order to the unruly world of private standards, where suppliers in global supply chains are monitored repeatedly by different corporate agents, each checking their compliance with different codes, with a clear multiplication of costs (Bartley 2005; Mamic 2005; Locke *et al*. 2007). In addition, the involvement of an international organization increases the credibility and legitimacy of monitoring activities, and contributes to assuage the vexed problem of credibly monitoring the monitors (O'Rourke 2003, 2005). Governments, too, generally value the flexibility and responsiveness of these systems (Ayres and Braithwaite 1992), since they promise to increase companies' compliance with standards without overloading thin departmental budgets and lean governmental staff.

We do not mean to argue that all international organizations are unambiguously evolving in the direction of networked governance. Specialized UN agencies such as the United Nations Environment Program (UNEP) or the ILO are very much torn between the new model and the old one of building international consensus on minimal regulatory requirements to be ratified and implemented by national governments through 'hard' law (standard-setting). At the same time, several of their initiatives are clearly modelled along the lines outlined above, as illustrated in the remainder of this paper.

## THE GOVERNANCE OF GLOBAL CORPORATE CODES OF CONDUCT

The paper focuses on the two main global corporate codes of conduct: the New OECD Guidelines for Multinational Enterprises (2000) and the United Nations Global Compact (1999). The former is an example of 'transgovernmental regulatory networking within an established international institution' (Slaughter 2003, p. 1050). It has been argued that with its 'multistakeholders approach [the Global Compact] bespeaks a wish to go beyond the classic model of intergovernmental multilateralism' (Thérien and Pouliot 2006, p. 61). The latter can be described as a global policy network contributing to complex multilateralism (O'Brien *et al*. 2000), and has been commended 'for its ability to bring together all public


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and private actors on issues critical to the global public interest' (Slaughter 2004, p. 9; see also Keohane and Nye 2003).

The two cases were selected for their potential impacts both in terms of geographical reach and of issue coverage. The empirical analysis draws on the analysis of UN and OECD documents (2005–2010) as well as on semi-structured interviews (2007–2009). The sources examined and the list of interviewees can be found in the appendix.

**The OECD Guidelines for multinational corporations**

The main purpose of the OECD Guidelines is to facilitate the resolution of disputes at the enterprise level through mediation and conciliation. They are not an alternative to national laws and regulations, to which multinational enterprises remain fully subject. 'While they extend beyond the law in many cases, they are not intended to place an enterprise in a situation where it faces conflicting requirements' (Sustainable Development 2007, p. 25). A distinctive feature of the Guidelines is that they are binding for governments by virtue of their adherence to the OECD Declaration on International Investment or of their spontaneous endorsement. Companies unofficially adhere to the Guidelines through their representation in the Business & Investment Advisory Committee (BIAC) of the OECD. Occasionally companies have signed the Guidelines, though this tool is not intended to be endorsed by corporations. 'A company is not expected to approve the Guidelines. A company is covered by these principles' (interview with Kathryn Gordon). However, while the recommendations to corporations are not binding, the *Specific Instances* procedure (see *infra*) can be activated irrespective of the company's acknowledgement of the Guidelines. In the words of one of our informants, 'we consider the Guidelines voluntary but not optional' (interview with Joseph Wilde).

***Origins***

When the OECD guidelines were launched in 1976, policy elites were engaged in a heated debate on the role of multinational corporations (MNCs) and on 'ways to limit the MNCs' influence on national developments' (interview with Kathryn Gordon). A crucial incident was the 1973 bombing of the ITT Inc headquarters in New York. The company was accused of being involved in the overthrow of the democratically elected (socialist) government in Chile (Sobel 1982).

The years preceding the adoption of the guidelines had witnessed a flurry of activities within the UN system, and in particular the establishment of the UN Centre for Transnational Corporations, which aimed to develop a comprehensive code of conduct for multinational corporations. However, political and ideological differences among UN member states undermined this endeavour and gave the OECD an opportunity to step in and fill the gap. In 1976, the 24 OECD member states agreed to a set of guidelines for responsible business conduct which were understood from the beginning to be of purely voluntary nature (Blanpain 1979, 1983; Campbell and Rowan 1983).

In the late 1990s, the OECD embarked on a revision of the guidelines. Again, the impetus for reform came from outside, from the socio-political debate on globalization, and particularly from a widespread concern, expressed in several quarters, about its negative social and environmental consequences, as well as from the failure to introduce binding constraints (for example, a social and/or environmental clause) within the multilateral trade regime (Servais 1989; Leary 1997; DeSombre and Barkin 2002). Following a consultation process that occurred between 1998 and 2000, the OECD responded by expanding the scope of the Guidelines. The revised guidelines have been adopted along


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the years by the 34 OECD member states and by 8 additional non-OECD countries (Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru and Romania).

The new version expanded the scope of the guidelines to include child and forced labour, workforce conditions and internal environmental management, human rights, and the fight against corruption through greater disclosure and transparency in corporate affairs. Another modification was the adoption of a wider definition of the targeted corporation. While the 1976 guidelines focused on transnational corporations, the revised guidelines were extended to small and medium enterprises as well (Jesover and Kirkpatrick 2005).

***Internal functioning***

The Investment Committee of the OECD has oversight responsibility for the New Guidelines, which are part of a broader OECD investment instrument. The interests of business organizations and trade unions are represented through the Business & Industry Advisory Committee (BIAC) and the Trade Unions Advisory Committee (TUAC), respectively. The ILO is also represented. While there is no formal consultative body for NGOs, 'the level of engagement and the importance of OECD Watch – a coalition of nearly 90 NGOs from all continents which is in charge of monitoring corporate conduct with respect to the guidelines – is practically the same as the other Committees' (interview with Vernon MacKay). Each adhering country sets up a National Contact Point (NCP) to coordinate national activities and to handle the Specific Instances Procedure, a complaint system introduced to deal with company violations. NCPs can be accessed by trade unions, NGOs, or other interested parties. When a complaint is lodged, the NCP first assesses whether the case deserves further examination. This phase may include a desk-based analysis of the complaint, of the company's response to it, and of any additional information provided by the parties. Then it moves to mediation. If no agreement is reached, a public statement on the case is issued.

The NCP responses vary tremendously across countries: some NCPs are timely and effective while others completely ignore the procedure (interviews with Veronica Nillson and with John Evans). Both OECD Watch and the Trade Union Advisory Committee believe that the uneven performance of the National Contact Points 'is severely undermining the effectiveness of the Guidelines as a whole, with improvements in some [countries] being negated by the persistently poor performance of a number of laggards, including Japan, Korea, and the US' (TUAC 2009, p. 2). Among the reasons for uneven performance, trade unions and NGOs cite differences in institutionalization; conflicting interpretations of the role of the Guidelines *vis-à-vis* parallel judicial proceedings (some NCPs, including Japan and the US, routinely suspend or reject cases that involve parallel judicial proceedings); the level of resource availability; the skill level of the staff; the staff turnover rate; the balance between confidentiality and transparency; and the lack of political will (interview with Kirstine Drew).

***Impact***

Assessing the impact of the Guidelines is in principle a complex task, because it is inevitably intertwined with the results of other initiatives and of the overall regulatory system, and with societal and governmental expectations about corporate conduct. In addition, because the Guidelines focus on all possible areas of corporate responsibility, from human rights to taxation, their impact is probably even more difficult to pin down than that of more narrowly focused standard (Locke *et al*. 2007; Locke *et al*. 2009). To our knowledge, no attempt at measuring the degree of corporate compliance with the


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guidelines, let alone quantitatively evaluating their impact, has been made thus far. We rely therefore on proxy indicators.

Even actors calling for the guidelines' procedures to be more deeply embedded in hard law acknowledge that the sheer presence and activation of National Contact Points has had a positive spill-over effect on the institutional capacities of some adhering countries, 'particularly those in which a culture of corporate responsibility was not widespread' (interview with Joseph Wilde). Filing a complaint has often been used by trade unions and NGOs as a strategy to strengthen the National Contact Point's role, and to push them to develop their expertise and capacity.

Nonetheless, the number of complaints submitted to the NCPs is small (90 for OECD Watch and 103 for trade unions between 2001 and 2009) and the number of decisions issued almost insignificant.

Since 2001 only 13 out of 90 cases submitted by NGOs to the NCPs (OECD Watch 2010) and 37 out of 103 submitted by unions (TUAC 2009) have resulted in a 'positive outcome' (that is, either a change in corporate behaviour or a 'procedural success', that is investigations followed by a strong, clear statement upholding the allegations). These small numbers are unlikely to be an indication of corporate compliance with the guidelines; they are more likely to result from the inefficiency of most National Contact Points. Interestingly, the Specific Instances are becoming a sort of semi-institutionalized international tribunal where complaints about corporate behavior are heard and decisions are issued. This evolution has had unexpected consequences for unions and NGOs: it has become so time-consuming and costly that once completed, it is often used to launch parallel legal cases in the competent national courts. In the words of one of the informants: 'we are talking about three years reading thousands of documents. The amount of resources required is making some NGOs reluctant to file a complaint' (interview with Bart Slob).

Despite the limited number of decisions and the questionable efficacy of many NCPs, the guidelines 'have become one of the main benchmarks of CSR, and they have influence on defining what the government expectations are' (interview with Dwight W. Justice). This is also recognized by the business community as one of the main impacts of the Guidelines (interview with Dirk Manske).

There are also promising, albeit so far only incipient, signs of impact in another domain: compliance with the Guidelines is being linked to the selection procedures of procurement agencies and financial institutions. For example, a Norwegian pension fund justified its recent decision to exclude a public company from its investment portfolio by referring, among other things, to the case filed against it at the UK National Contact Point (TUAC 2009).

In synthesis, the OECD guidelines are becoming increasingly formalized and quasi-judicial: they provide actors (unions and NGOs) with a forum in which to lodge complaints against corporations and seek 'weak redress' in the form of sanctioning decisions issued by a National Contact Point. This is in principle not dissimilar from the (hard-law) process available to unions (and employers) through the Committee on Freedom of Association of the ILO (Gravel *et al*. 2001). It should be noted that the ILO's supervisory bodies – the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards – regularly examine the application of international labour standards in ILO member states. Representation and complaint procedures can also be initiated against states that fail to comply with conventions they have ratified. A judicial forum set up in 1951 – the Committee on


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Freedom of Association – reviews complaints concerning violations of freedom of association, whether or not a member state has ratified the relevant conventions. Differently from the ILO's process, however, the OECD redress system is not homogeneous in its impact since it depends heavily on the responsiveness and effectiveness of the relevant National Contact Point.

**The UN Global Compact**

The UN Global Compact (GC) is a voluntary multi-stakeholder initiative which, as the OECD guidelines, sees itself as a complement to – not a substitute for – legal regulation at the national or international levels. Endorsed by chief executives, it seeks to align business operations and strategies with 10 universally accepted principles drawn from the most important declarations and conventions adopted by the UN in the areas of human rights, labour, environment, and the fight against corruption. It is not to be considered 'a formal UN institutional structure requiring intergovernmental oversight' (Zammit 2003, p. 49), but rather a network involving companies, governments, unions, business associations, NGOs, academia, and a small UN Global Compact Office backed by six UN specialized agencies.

Even more than the OECD guidelines, the Compact has generated contentious debate. On the one hand it is considered 'the world's leading corporate citizenship initiative' (Annan 2006) and 'the only significant attempt to institutionalize norms of corporate social responsibility at a global as opposed to national or regional level' (Knight and Smith 2008, p. 1). On the other hand it has been included 'in the category of UN departments that don't merely waste space but actually make the world a worse place' (Lee 2009).

Some scholars claim that it diverts attention from the place where attention should be focused on, the WTO (Hughes and Wilkinson 2001, p. 158), and that it 'represents an institutional separation of rights and responsibilities on terms that [. . .] free the WTO from the need to concern itself seriously with the social, environmental, and ethical side-effects of neo-liberal economics' (Knight and Smith 2008, p. 5). Other scholars argue that the existence of the GC 'stigmatiz[es] options that involve [. . .] binding regulation' (Thérien and Pouliot 2006, p. 67). Other critics accuse the compact of 'having depoliticized [. . .] counter-hegemonic movements around the activities of TNCs by attempting to delimit the site of struggle to cyber-space (the learning network)' while simultaneously 'free[ing] bourgeois states of any responsibilities for their decisions to implement business friendly environments with human and ecological costs' (Soederberg 2007, p. 510). Clearly, the point of view of many is that the GC is pure window-dressing.

***Origins***

The launching of the UN Global Compact originated from the increasing interactions between the United Nations and the business world dating from the early 1990s (Tesner 2000; Zammit 2003). There are at least three complementary explanations for the UN decision to launch a global partnership with the private sector. First, the complexity and interdependency of the current challenges called for a multi-stakeholder solution. In addition, with the concurring Millennium Declaration, based on eight interconnected principles, as well as with the General Assembly's resolution on global partnership, the UN had already embraced a multistakeholder approach. The GC was a further step in the same direction (Ruggie 2001; Kell and Levin 2002). Second, corporate partnerships were seen as a promising new way to attract political and financial support for the UN, after


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more than a decade of heavy criticism from important business quarters, conservative foundations, and think-tanks, particularly in the US (Paine 2000; Zammit 2003). Third, 'the probability of the UN General Assembly's adopting a meaningful code anytime soon approximated zero' (Ruggie 2001, p. 373). Kell and Levin (2002, p. 152) claim that the United Nations Global Compact 'at its core is simply a strategy to make the UN relevant by leveraging its authority and convening power':

> In most domains the UN continues to pursue its traditional approach to conventions, which remain its bread and butter, but the lack of a political mandate in this field and the lack of institutional capacity make a hard-law global code binding for corporations unfeasible. None of the major governments would give the UN this mandate, which would mean handing in their executive power. Also, to enforce a global corporate code would require an army of professionals. As a consequence, the options available were doing nothing or pursuing this experimental strategy. (interview with George Kell)

The above quote suggests that the Global Compact initiative was adopted *faute de mieux*, that is owing to the political impracticality of a binding international instrument.

### *Internal functioning*

'Learning network' and 'learning platform' are two expressions often used to describe the mission and the tasks of the Global Compact (Ruggie 2001; Kell and Levin 2002; Zammit 2003). Indeed, the Global Compact Framework document states that learning and dialogue are among the primary goals of the initiative (United Nations 2005). The learning venues are multi-centric and geographically scattered. A prominent role is played by the Global Compact Office and by the inter-agency team. These organize thematic working groups on specific sectors and issues. The working groups are expected to 'assist participants to implement principles' (interview with Olajobi Makinwa). Examples are the Global Compact's financial initiative *Who Cares Wins* or the extractive industry's initiative on business in conflict zones. They also provide opportunities to interact with other organizations, both within and outside the UN system.

Maybe the most prominent example is the Anti-Corruption Working Group, which operates in close contact with institutions such as the UN Office on Drugs and Crime, the NGO Transparency International, the International Chamber of Commerce, and the World Economic Forum – Partnering Against Corruption Initiative. The group has developed tools and resources for improved anticorruption reporting within supply chains. It has organized workshops in Nigeria, bringing the public and private sectors together on this issue, and India, seeking to bring greater awareness to transparency in business. In addition, to advance the effective implementation of the UN Convention against Corruption, the working group has recently developed a letter to be endorsed by CEOs calling on governments to enforce and monitor the Convention effectively (UN Global Compact Board July 2009).

The participation of Transparency International, a highly reputed NGO, in the activities of the Compact, is not an isolated case. Other well-known organizations such as Amnesty International or Human Rights Watch are among the approximately 700 NGOs adhering to the Compact. Their participation ranges from partnering with corporations, attending the meetings of the Local Networks, sitting in the GC Board, and collaborating with the working groups. The status of insiders has not prevented them from voicing their disapproval on specific issues, such as in 2003, when they complained publicly that the Global Compact lacked any accountability mechanism (interview with Bart Slob).


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Several NGOs (large and small) have chosen not to engage with the Compact and instead to exert pressure from the outside (Global Compact Critics 2008). The most frequent criticism has been that the initiative 'lacks teeth' and that it is a 'blue-washing' mechanism that allows corporations to 'promote a socially responsible image through their association with the UN' (Utting 2006, p. 8). For example, the Alliance for a Corporate Free UN, launched in 2000 as an international coalition of NGOs, called on the UN to 'forgo such collaborations [with enterprises] and play the more appropriate role of counterbalancing corporate-led globalization' (CorpWatch 2001). In addition, numerous NGOs participate in the Global Compact Critics blog, an online platform acting as a watchdog of the initiative.

The Global Compact Office's attempts to parry the attacks of some NGOs have led to various changes. In an effort to root the Global Compact within different national and cultural contexts, and also to better manage the Compact's rapid expansion, the role of the Local Networks has been strengthened. Between 2006 and 2009 the number of networks rose to 65, with an additional 20 in development. This is a vast increase from 2001 when there were just four local networks (UN Global Compact 2007b, p. 15).

Another change is the strengthening of civil society's involvement. For example, a Civil Society Coordinator has been hired by the Global Compact Office. In addition, NGOs are now included in the UN Global Compact Board, together with businesses, unions, and UN representatives.

Lastly, three 'integrity measures' have been introduced. First, the use of the Global Compact's name and logo is now limited to internal training or to activities aimed to promote the code with other corporations, and should not be marketed as a UN's seal of approval for the company in question. Second, a procedure handling allegations of 'systematic or egregious abuse' of the Compact principles has been activated. Examples of such abuses include substantiated allegations of company involvement in murder, torture, the worst forms of child labour and other child exploitation, serious violations of individuals' rights in situations of conflict, severe environmental damage and gross corruption.

Third and most important, according to the Global Compact's policy on communicating progress, participants are asked to annually communicate their progress in implementing the Global Compact principles. If a participant fails to communicate by the deadline, it is listed as 'non-communicating' on the Global Compact web site. If a participant fails to communicate progress for two years in a row, it is labeled 'inactive'. Inactive participants are not permitted to participate in Global Compact events, including local network activities, until a Communication on Progress is submitted. If a third year passes without the submission of such Communication, the company is de-listed. In addition, the Global Compact has published the names of de-listed companies. These organizational developments have been called a 'ratcheting-up' of compliance mechanisms (interview with Peter Utting).

Interestingly, the UN Global Compact Office disagrees that it needs to increase its enforcement capacities. Rather, it conceives itself as a transparency agency aimed to improve the quality of the information available. Illustrative of this position are the words of the Responsible for the Local Networks at the UN Global Compact Office:

> I don't think we should have 'teeth' at all. We are only a brand and our participants market this brand worldwide .... We don't have resources but, most important, we don't want them. We don't want to thicken our institutional structure, turning it into a


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> bureaucracy. Our role is to make public the communication on progress that companies produce and we try to enable a more robust public accountability structure. (interview with Soren Mandrup Petersen)

***Impact***

The Global Compact Office has recently celebrated its 10th anniversary at the 2010 Global Leaders Summit. The event has predictably spurred a debate on the results achieved so far. The task is not trivial since, as Mwangi and Schmitz (2007) point out, it is easier to track the human rights or labour record of states than to determine the level of corporate compliance with the same principles. One of the main practical challenges is that it is not possible to isolate the impact of specific corporations in a particular sphere of influence. Therefore, 'the strongest evidence of the relevance and effects of the GC will be found in the discourse around a corporation's membership in the GC reports and communications' (2007, p. 29).

The relatively few academic works that have tried to assess the Compact's effectiveness have looked at 'how much its underlying ideas and culture have been adopted by various actors within the system' (Cetindamer and Husoy 2007). One study focuses on three companies in the telecommunication industry (Runhaar and Lafferty 2009); another on a sample of 40 companies in India (Chahoud 2007); and a third on a sample of 30 respondents among the Compact participants (Cetindamar 2007). The findings are mixed: the first two studies suggest that membership in the programme did not have a significant impact; the third concludes on a rather more optimistic note by emphasizing the importance of network opportunities and of improved corporate image among the participants.

In terms of number of participants, with roughly 7,000 signatories − 5,200 from business and 1,800 from civil society and other non-business organizations – from over 135 countries, the Compact is the largest global corporate citizenship initiative available (UN Global Compact 2009a). It is also encouraging that in 2008 there was a 30 per cent increase in new corporate signatories relative to the previous year.

Nevertheless, approximately one-fifth (1035 out of 5211) participating corporations have been delisted (United Nations Global Compact Bulletin 2009b), and another 935 corporations are currently listed as non-communicating. Based on responses to the 2008 Global Compact Implementation Survey, only 8 per cent of participants identified themselves as advanced performers while the vast majority ranked themselves in the beginner to intermediate range. This would confirm the suspicion that companies not willing to do much about their environmental and social performance select the Global Compact as their instrument of choice (interview with Bart Slob).

With regard to the penetration of the 10 principles and of the UN GC initiative in the organizational culture and in the daily operations of participating companies, according to the 2008 Global Compact Implementation Survey, fewer than 10 per cent of the companies take into account their Global Compact commitments when selecting supply chain partners or take action to spread commitment to the Global Compact throughout its subsidiaries. This limited impact is in line with the results of research examining the interaction between CSR and other corporate practices (Locke *et al*. 2007, 2009; Locke and Romis 2010).

At the same time, the Global Compact does have some means to influence corporate conduct and investment flows. One channel is through capacity building by the local networks. While these activities 'do not add that much value in countries already acquainted with the issue of sustainability, in countries such as Nigeria, Ivory Coast or


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Jordan companies may benefit from being exposed to and involved in the 10 principles' (interview with Bart Slob). The other channel is the activation of linkages between Compact reporting and public procurement agencies or financial institutions. For example, in Denmark, a law was adopted in December 2008 requiring the 1100 largest companies in the country to report on their corporate responsibility efforts. The bill makes it mandatory for publicly listed companies, state-owned companies, and institutional investors to report information on CSR based on the Global Compact's Communication on Progress format. In addition, there has been talk to incorporate sustainability concerns into the procurement function of the UN system itself. If these proposals were to become reality companies that do business with the UN would be compelled to abide by the principles of the GC.

Moving from procurement to investment, one tangible example of the Compact's impact is the warning sent in January 2008 by a group of investors (led by Morley Fund Management in the UK) to a group of 78 listed companies. The warning was motivated by the failure to comply with the reporting obligations of the GC. In this communication, the group of investors also praised a smaller group of companies for 'notable' performance under the UN Global Compact (Mackintosh 2008). Similarly, a prominent investor group has written to the chief executives of the biggest listed companies whose GC reports are late, urging them to comply. In November 2008, a group of 52 ethically oriented investors wrote to nearly 9,000 publicly traded corporations, urging them to join the Global Compact. These investors, who manage approximately US$4.4 trillion in assets, plan to send follow-up letters to the targeted companies in late 2009 and to release the results of the campaign afterwards. The same investors wrote to the chief executives of approximately 100 companies in 30 countries in early 2008, either praising the company's exemplary disclosure under the Global Compact's Communication on Progress (COP) procedure, or urging them to comply with the COP requirement. The action resulted in an increase of over 30 per cent in COP submissions. Based on the success of the initiative, the action was repeated in January 2009. Lastly, in a recent move to facilitate consideration of environmental, social, and governance issues in investment decisions, the annual Communications on Progress (COP) of the Compact participants have been included and are now searchable in the Bloomberg Professional service platform, the most widely used database for financial professionals worldwide (UN Global Compact 2009a). This is part of the Compact's strategy to encourage the investment community and other stakeholders to use the COP information for corporate performance analysis.

In brief, it seems that, under pressure from civil society, the GC is finally beginning to distinguish within the pool of participants between compliers and non-compliers, even though the indicator of compliance is so far purely procedural. This ability to issue 'soft sanctions' (negative assessments) through the Communication on Progress procedure seems in perspective an important development. There is instead no evidence that the various thematic working groups and local networks have had any concrete impact on corporate behaviour.

## THE CASES REVISITED

There are strong similarities between the OECD Guidelines and the UN Global Compact. Both are voluntary (that is, not legally binding); they have a global reach; cover common areas such as human rights, labour, the environment, and the fight against corruption; they include non-governmental, labour, corporate, and public organizations in their structures;


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and are organized similarly, that is with a central unit surrounded by a constellation of local chapters.

However, while the OECD guidelines are endorsed by governments, and through this channel recommended to businesses, the UN Global Compact Principles are endorsed directly by corporations. In addition, while labour, corporate and non governmental organizations have each their own institutional roles (in the form of sub-networks) within the OECD Guidelines, the Global Compact is in principle an initiative that solely concerns companies. We now revisit the two case studies, addressing the following questions:

1. What is the origin and significance of the two initiatives?
2. What is their internal functioning? In particular, what is the attitude of NGOs and trade unions?
3. What is the role of the local structures?
4. What is the overall impact of the programmes?

International organizations involved in the regulation of corporate behaviour are in many respects not comparable to national and sub-national agencies. At the national level, one can safely assume that there is a mandate for a public agency to intervene in a particular policy area. Such a mandate is generated through the traditional electoral mechanisms, by which a government is legitimated to implement policies that correspond to the preferences of a clearly identifiable constituency, or at least the majority thereof. In order to fulfil its mandate effectively, the agency can then decide either to put in place a traditional command-and-control structure, or to rely on a governance solution, for example a network of public and private actors. It is likely that in circumstances in which the problems to be resolved are too variegated and interconnected to warrant standardized solutions, and require the direct involvement of actors with local knowledge and motivational/mobilization capacities, the latter is indeed more effective than the former.

In the case of international organizations, no clear constituency nor mandate are identifiable. The organizations are not agents called upon to implement the will of a principal, but are more aptly regarded as 'entrepreneurial actors' who identify a vaguely defined problem area, and use it to carve a role for themselves. Neither the OECD nor the UN has a clear mandate to regulate the behaviour of MNCs, let alone companies in general. Obtaining such a mandate would not be categorically impossible – in theory the two organizations could pass international law instruments to this effect – but it is practically highly unlikely since the matter in question is too controversial to ever achieve the high levels of consensus (at the limit, unanimity) required to pass international law. Indeed, as illustrated above, a governance solution is often put in place after a standard setting attempt has failed (Ruggie 2008).

Furthermore, the adoption of a binding international code would pose two additional problems of implementation. First, not all states would be equally committed (or capable) of enforcing it. Second, it is not clear which international court would adjudicate disputes. In principle, the jurisdiction of the existing International Criminal Court would cover the actions of corporate executives. However, 'limited resources and other pressing cases mean that any such action would be rare, symbolic and mainly exemplary' (Pitts 2009, p. 430). As for the creation of a new international court charged with hearing cases of companies as legal persons, this is an unlikely scenario, and one 'no one seriously expects to materialize anytime soon' (Ruggie 2009, p. 5).


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The political and practical limitations of what we have called the 'traditional approach' to regulation (standard setting) help to explain the emergence of global codes. Key for their emergence was a diffused perception that something needed to be done about corporate behaviour, even though there was no agreement on exactly what was to be done, and how deep-reaching the measures would need to be. The OECD and the UN exploited both the perceived need and the ambiguity to launch programmes which circumvented the most pressing problems of political acceptability (by only requiring actors to subscribe to general statements of principles, bereft of clear legal definitions of what exactly such principles implied), and which relied heavily on voluntary compliance by the corporations as well as voluntary monitoring or at least scrutiny by NGOs and civil society. With this move, both organizations asserted the legitimacy of their presence in the controversial area.

This leads us to question 2 on whether these initiatives meet with consensus among NGOs and unions. We have found no evidence of capture, that is of a reduced ability of these organizations to vigorously voice their causes and pursue their concerns as a result of their institutionalized participation in the forums (Baccaro and Papadakis 2009). In the case of the OECD guidelines, for years unions and NGOs have asked for greater legal formalism and for legally actionable codes. Recently, however, they seem to be reframing their demands away from legal enforceability and towards greater attention to 'material consequences' for companies violating the guidelines. This reflects a general scepticism about the effectiveness of the guidelines (Christine Drew speech at the OHCHR Consultation on Business and Human Rights Geneva 6 October 2009).

Proposals have been made to strengthen the linkages between the OECD Specific Instances Procedure and public procurement procedures. In other words, companies found in violation should be excluded from public procurement tenders. In addition, Friends of the Earth Europe proposed 'banning the participation of those companies to government advisory groups or trade delegations to foreign countries or to applications for development subsidies' (Interview with Paul de Clerk).

Turning to the Global Compact, numerous civil society organizations are harshly critical of this initiative. In some respects their insistence on the weaknesses and shortcomings of the GC is an explicit strategic choice: by targeting the most important programme for corporate accountability they seek to achieve positive spill-over effects on the whole range of voluntary corporate initiatives pursuing similar goals (Knight and Smith 2008). The strategy seems to be paying off since the wave of criticisms has contributed to the toughening of the requirements for corporate participation in the GC.

Regarding the role of local structures (question 3) – Local Networks (GC) and National Contact Points (OECD Guidelines) – it is acknowledged even by critics that these have helped build some institutional capacity in countries where corporate social responsibility is neither a public priority nor a private concern. However, both institutional structures are heavily criticized for their inadequacies. Contact Points are argued to suffer from lack of capacity, political commitment, and resources. Moreover, they seem to be negatively affected by a failure of institutional design (OECD Watch 2009; TUAC 2009): they are typically hosted by the Ministry in charge of promoting industrial development and foreign investment, and consequently can hardly be considered *super partes* when called upon to evaluate disputes involving corporations. In 2010, ten years after the last revision of the Guidelines, the 42 adhering governments agreed on the terms of reference for carrying out an update of the Guidelines.


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With regard to the Global Compact's Local Networks, at least one actor, the international trade union movement, has doubts about the value of their proliferation. From the point of view of trade unions, the main attraction of the Global Compact is to provide a forum by which trade unions and civil society organizations could engage MNCs at the global level. For them, 'it is not clear that the local networks further that purpose. Many local networks do not produce dialogue beyond the business community because participation in them is selective and often avoids trade unions. While the local networks can facilitate involvement of SMEs, this shifts the focus away from the impacts of large MNCs' (interview with Dwight Justice). Overall, the proliferation of local venues *per se* is unlikely to matter much for outcomes, unless these local venues contribute to strengthen the quality of performance indicators produced by the programmes.

This consideration leads to the issue of impact (question 4), which seems so far limited in both cases. The redress procedures activated under the OECD's Specific Instances are few and overly time-consuming. The impact of membership in the Global Compact is, according to the companies' own self-reporting, also negligible: only 8 per cent of participating companies identify themselves as advanced performers.

At the same time, there is no evidence that global codes are positively counterproductive in the sense that they divert attention from the 'true' solution, that is the passing of an international code that would constrain corporate behaviour through the threat of legal or economic sanctions, as sometimes argued. As discussed above, such an international code is a remote possibility and its enforcement would in any case be highly problematic.

Based on our assessment of the programmes, the most interesting and promising trait of the two global codes is the potential ability to issue signals that discriminate between good and bad performers. At present this ability is far from fully developed, but it could be. This would imply strengthening the gathering, processing, and diffusion of reliable information (including rankings) on company performance, so as to clearly differentiate between good and bad performers based on a set of credible and verifiable criteria. It is likely that this information would then be used in investment and funding decisions by other economic and social actors such as ethical finance institutions, public procurement agencies, and so on. In other words, even in the absence of 'teeth', the soft power of information collected and brokered by global initiatives such as the GC or the OECD guidelines, could induce companies to internalize the demands of society in other ways (Fung *et al*. 2007). The discussion on linking the assessments of the OECD National Contact Points with the investment decisions, export credit grants, or public procurement contracts of national governments, or the threat recently issued by a group of financial investors to 'punish' companies that fail to comply with the reporting obligations of the Global Compact, are all signs that such evolution is both possible and promising. Neither of the two programmes is yet able to produce the kind of fine-grained information that ethically oriented market actors and NGOs would need. It is exactly these types of abilities that global codes should sharpen.

## CONCLUDING REMARKS

Through an analysis of the two most important international programmes for the regulation of corporate behaviour, the OECD Guidelines for Multinational Corporations and the UN Global Compact, this paper has analysed the changing role of international organizations in regulating the business environment. Exercising what we have called 'the traditional role' of international organizations – building wide consensus


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among adhering states about minimal-yet-detailed regulatory standards – has become increasingly difficult due to the controversial nature of the matter, which prevents the emergence of common ground among nation-states on which traditional international law instruments could be based.

The traditional regulatory model seems to be giving way to a new model centred on network governance (Abbott and Snidal 2009). International organizations issue and promote general declarations of good conduct (rather than detailed regulatory norms) and then involve public and private actors in the further spreading and implementation of the principles. Although there is no clear evidence that such regulatory solutions are necessarily more efficient than traditional standard setting, they have distinct political advantages in that they allow international organizations to assert their legitimate role in the policy areas in question while imposing minimal requirements on the constituents and thus avoiding the most pressing problems of political acceptability.

The paper has argued that, as they currently stand, these programmes are unlikely to fundamentally alter corporate behaviour and bring it in line with societal expectations about good corporate citizenship. However, they look more promising when regarded as elements in a wider mix. An emerging wave of research underscores the importance of a mixed approach to international regulation. For example, Locke and Romis (2010) emphasize the complementarity between corporate social responsibility initiatives and workplace reorganization efforts empowering workers. Amengual (2010) focuses on the virtuous circle between private compliance mechanisms and revitalized state-led inspection activities. Kerr *et al*. (2009) write about the progressive mutual interpenetration of 'hard and soft law' instruments. Here we have underlined the potential elective affinity between global programmes focusing on the production and circulation of credible information about corporate performance and the investment and procurement choices of private and public actors, particularly those involved in social finance.

The reason why global corporate codes of conduct currently have a limited impact is not necessarily their lack of 'teeth' as often asserted, but the insufficient development of their information-brokering role. If these programmes strengthened their ability to synthetically communicate credible information about corporate performance to the public, they could play an important role in the emerging hybrid system of corporate regulation.

## ACKNOWLEDGEMENT

Valentina Mele gratefully acknowledges financial support from the Public Policy and Public Management Division, SDA Bocconi School of Management. An earlier version of the paper was presented at the Transatlantic Dialogue Conference (4TAD), 12–14 June 2008 Milan.

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*Date received 14 February 2009. Date accepted 12 February 2010.*

## APPENDIX

The primary sources consulted included primarily UN Global Compact reports and OECD Guidelines for Multinational Corporations reports, UN General Assembly Resolutions, the Secretary-General's Reports to the General Assembly dealing with UN-Business Partnerships, independent studies on the Global Compact or the OECD Guidelines, papers and presentations of academics and consultants available at the UN Global Compact Critics web site, reports of the United Nations Research Institute on Development (UNRISD), and reports by OECD Watch. Other documents consulted were the TUAC OECD analyses of the National Contact Points, the TUAC presentations on cases and policy updates, the UN Global Compact Annual Reviews, the reports of UN Global Compact Board meetings. Background papers and official reports of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises were also consulted.

Interviewees were identified based on analysis of public documents and direct participation at United Nations Research Institute for Social Development (UNRISD) and


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UN Global Compact meetings. Semi-structured interviews were then conducted either by phone or face-to-face. These lasted between 40 minutes and three hours. Most interviews were tape-recorded. A first round of 10 interviews (March–May 2008) focused on understanding the basic functioning and governance mechanisms of the programs. It was followed by a second set of six interviews (September–October 2008); and by a third set (June–October 2009) specifically focused on evaluating the impact of the initiatives and triangulating the information previously collected (Yin 1994).

The list of interviewees is as follows:

1. Peter Utting, Deputy Director of the United Nation Research Institute on Social Development (UNRISD), author of several reports on the two initiatives. 12 March 2008.
2. Emily Sims, ILO Senior Specialist, Multinational Enterprises Programme. 12 March 2008.
3. Bart Slob, Senior Researcher at SOMO, the Netherland-based NGO in charge of managing OECD Watch. Responsible of the Global Compact Critiques blog. 16 & 17 March 2008; 4 June 2009.
4. Vernon MacKay, Director of the Canada National Contact Point for the OECD Guidelines, in charge of coordinating the OECD National Contact Points Working Group. 3 April 2008.
5. Manfred Schekulin, Chair of the OECD Investment Committee and Director of the Export & Investment Policy, Austrian Ministry o Economics and Labour. 3 April 2008.
6. Kathryn Gordon, OECD Senior Economist of the Investment Committee. 4 April 2008.
7. Laura Iucci, ILO Senior Specialist, Multinational Enterprises Programme. 10 April 2008.
8. Paola Pinoargote, ILO Senior Specialist, Multinational Enterprises Programme. 12 March 2008.
9. Soren Mandrup Petersen, Head of Partnerships and responsible of the Local Networks at the UN Global Compact Office. 20 May 2008.
10. Olajobi Makinwa, Civil Society Coordinator at the UN Global Compact Office. 20 May 2008.
11. Veronica Nillson, Senior Policy Advisor, Trade Unions Advisory Committee to the OECD (TUAC). 16 September 2008.
12. John Evans, Director of the Trade Unions Advisory Committee to the OECD (TUAC). 30 September 2008
13. Dirk Manske, Senior Policy Manager, Business & Investment Advisory Committee to the OECD (BIAC). 1 October 2008.
14. Georg Kell, Director of the UN Global Compact. 14 October 2008.
15. Marco Frey, Chair of the UN Local Network, Italy. 16 September 2008.
16. Joseph Wilde, Senior Researcher at SOMO, the Netherland-based NGO, coordinator of OECD Watch. 4 October 2008; 6 October 2009.
17. Bart Slob, Senior Researcher at SOMO, the Netherland-based NGO in charge of managing OECD Watch. Responsible of the Global Compact Critiques blog.
18. Kirstine Drew, Policy Advisor, Trade Union Advisory Committee to the OECD (TUAC). 8 July 2009.


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19. Dwigth W. Justice, Policy Advisor, International Trade Union Confederation (ITUC) (ITUC is a member of the Trade Union Advisory Committee to the OECD and of the UN Global Compact). 20 July 2009.
20. Paul de Clerk, Coordinator Corporate Campaign Friend of the Earth International and Economic Justice. Friends of the Earth Europe. 6 October 2009.
21. Chip Pitts, Board President of the Bill of Rights Defense Committee and former Chairman of Amnesty International USA. 29 October 2009.


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